10 May 2019

Consumer Data Right Division
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Lodged electronically: ACCC-CDR@accc.gov.au

Dear Sir/Madam

Consumer Data Rules 2019 – Exposure Draft

Origin Energy appreciates the opportunity to provide input into the Australian and Competition and Consumer Commission's (ACCC) Exposure Draft of the Competition and Consumer (Consumer Data) Rules 2019 (CDR Rules).

The *Treasury Laws Amendment (Consumer Data Right) Bill 2018* amends the Competition and Consumer Act (CCA) to create the Consumer Data Right which will apply to sectors of the economy that have been designated by the Minister. These CDR Rules provide the operational details of how data is shared, the criteria for accreditation, dispute resolution and privacy safeguards.

The Government has committed to applying the CDR to the banking, energy and telecommunications sectors. However, the explanatory materials to the Amendment Bill makes it clear that the initial application of the CDR will be to the banking sector and further sectors of the economy may be designated over time.

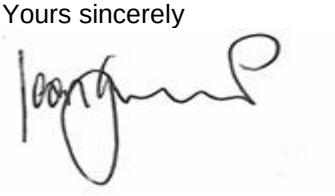
The Consumer Data Rules are made under section 56BA of the CCA and are intended to provide details of how consumer data right works. While it is clear that Schedule 2 of the draft CDR Rules are specific to the banking sector, the application of Parts 1-9 of the draft CDR Rules is not clear.

To the extent that Parts 1-9 reflect a framework to enable the consumer data right to be applied to various sectors of the economy over time then it should only include broad based principles. We believe that certain provisions in the proposed Parts 1-9 are too banking specific and should be contained to the schedule designated to banking; as should any provision specific to a designated industry.

Origin's high-level concerns with the practical application and implementation of the CDR Rules in the energy sector are set out in **Attachment 1**.

If you would like to discuss any aspect of this submission, please contact Caroline Brumby on [redacted] / [redacted] in the first instance.

Yours sincerely



Sean Greenup
Group Manager Regulatory Policy
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Attachment 1: Key concerns with the practical application of the CDR Rules to Energy

The energy and banking CDR framework models are likely to be vastly different. The preferred energy industry model is a 'gateway model' whereby AEMO will act as a 'gateway' for the request and collation of data from various data holders (ie retailers, distributors, meter providers) to third party data recipients. Appropriate authorisations would be required to transfer the data. Who and how authorisation would occur in the energy sector is an outstanding framework issue. This energy model has been subject to ACCC consultation and it is expected that a decision will be published in late May or early June 2019.

In contrast, the banking sector CDR model is based on each of the individual banks providing the requested data directly to the accredited data recipients. There will only be one data holder for the sets of data to which a CDR consumers requests.

It is not clear to Origin that the draft CDR Rules for banking will be an appropriate starting point for the development of CDR Rules for the energy sector. The energy sector has a comprehensive regulatory framework that could be utilised for the development of a CDR regime. Leveraging current industry standards and frameworks may deliver a more efficient and cost-effective CDR regime for the energy sector rather than introducing new requirements that deviate from current practices.

Set out below are Origin's concerns with the practical application and implementation of the current CDR Rules to the energy sector at this time.

1. CDR Contract (Rule 1.8)

A new development in the CDR Rules is that the accredited data recipient can only request and receive data on behalf of a consumer if they have entered into a contract with the consumer to supply goods of services to the consumer using their CDR Data. The contract must provide the consumer with an ability to terminate (Rule 1.8).

It is critical that the defined term *CDR contract* be a stand-alone contract and separate to the contract under which any goods or services are provided for in energy sector. There are three key reasons for this:

(i) In the energy industry, it is likely that CDR data will be required to provide a detailed quote or analysis of product suitability for a customer. It is not likely that the customer will enter into a good and services contract with a retailer to obtain a quote;

(ii) It is not commercially feasible to allow customers to terminate their goods or services contract when they are revoking their CDR data consent. This is only reasonable where a retailer cannot provide the goods or services without the CDR data. There are circumstances where energy retailers may provide upfront or ongoing benefits to customers on the basis that the customer stays with the retailer for a minimum period. There are no clear justifications to allow a customer to terminate these contracts because they withdraw their CDR consent; and

(iii) Standing contract are supplied on minimum terms and conditions. Electricity is an essential service and consumers cannot terminate the agreement unless they are moving to other terms and conditions. It would not fit with the realms of the energy supply market for a customer to terminate their standing contract, as they withdraw their CDR consent, and have no contractual terms in place.

2. Consumer dashboard – data holder (Rule 1.14)

The draft CDR Rules mandate a new requirement for data holders and accredited data recipients to offer an online consumer dashboard to CDR consumers for making data access and transfer requests.

Origin does not believe that an online consumer dashboard will be relevant to the energy sector, unless it was in a centralised location. CDR data requests are likely to be made to several data

holders for each of the various data sets, but with the transfer of data managed through an AEMO "gateway model".

There will be cases where:

(i) The data holder (ie distributor, AEMO) does not have a consumer interface with the customer;

(ii) Data is requested from a data holder where the customer is no longer a customer of that data holder (ie customer has moved from retailer 1 to retailer 2 to retailer 3 over a period). Where does the consumer dashboard obligations lie if there is no active account for the customer?

(iii) Data is requested from a data holder and the customer transfers on the next meter read. Would the obligations for the dashboard cease when the customer transfers? Which party takes over the notification requirements?

In the above cases, an on-line dashboard may be irrelevant as there are no active accounts or interface with the data holder. The electricity industry is highly fluid and customers can transfer from retailer to retailer within short periods of time and it will be extremely difficult to track and implement this draft CDR Rules in the energy sector.

3. Product data request (Rule 2)

The draft CDR Rules defines Product Data as data unrelated to individual consumers (ie general product information) relating to the eligibility criteria, terms and conditions, prices, availability or performance of a product. Product data, as currently drafted, is included in the general section of the CDR Rules to apply to all industries.

The "product data" requirements in the draft CDR Rules are not relevant to the energy sector as:

(i) the energy sector already has a requirement under the National Electricity Retail Rules to display generic product details on an Energy Made Easy website. This could be referred to as "generic data": and

(ii) the draft energy CDR framework model is exploring "individually tailored" that are specific to the customers as a potential data set. It is not given that this will form part of the CDR energy framework.

Origin believes that any reference to "product data" should be moved to the banking schedule to remove any confusion as to the application of this term in other sectors.

4. Customer Directed Requests (Rule 3)

The draft CDR Rules provide for a CDR consumer to make a direct request to the data holder.

The applicability of this draft Rule to the energy sector will need to be carefully reviewed. If the preferred energy "gateway model" is adopted, requiring customers to contact each of the designated data holders (which are likely to be varied) will be timely and provide for a poor customer experience. Customers will want to have the option to approach one party – their current retailer – to provide a collated view of their energy usage and account.

The current focus of the development of the CDR energy model is on third party access to data. Customer directed requests are out of scope given customers already have the means and mechanisms to obtain data through either online facilities or direct requests to their retailer.

5. Consumer data requests made by accredited persons (Rule 4.5)

A key component of this Rule is in relation to the requirement for a data holder that receives a request from an accredited person to ask the CDR consumer to authorise disclosure of the requested data.

Authentication is going to be a complex issue for the energy industry to determined given the potential for multiple 'data holders' providing data and the potential for AEMO to be designated both as a 'data holder' and 'gateway' for different data sets. It is not clear that 'data holders' will even be the party to authorise the consent or whether a central source at the time of each data request will undertake a coordinated authentication process.

A further issue that the CDR Rules will need to address are the process requirements if a CDR consumer does not respond to a request for authorisation in the energy sector. We will require clear obligations on the number of times attempts need to be made to contact the customer and the implications if the customer does not respond (ie only data that has received the authorisation will be released).

6. Consents to collect CDR data (Rules 4.9- 4.10)

The draft CDR Rules provide that an accredited person collecting and using CDR data, must ensure that the consent is voluntary, express, informed, specific to purpose, time limited and easily withdrawn.

The consent process should align with the relevant sector standards. The energy sector has explicit informed consent requirements under the NERL and NERR and subject to compliance rigour. These consent requirements extend to any third party working on our behalf.

Origin questions the rational of the draft CDR Rules only being able to withdraw consent in writing or via a consumer dashboard. It provides for a poor customer experience if a customer calls an accredited data recipient to withdraw their consent and the customer is informed that they must withdraw their consent is in writing or via an online consumer dashboard. This is likely to provide customer dissatisfaction.

Withdrawing consent is going to be a complex process for the energy sector. If a CDR consumer informs an accredited data recipient that they are withdrawing consent – who is the accredited data recipient required to notify? It is unclear whether each data holder will need to be notified or whether information will be passed through AEMO's 'Gateway' systems.

7. Ongoing notification requirements – consents to collect CDR data (Rule 4.14)

The daft CDR Rule requires the accredited person to notify the CDR consumer who gave the consent, each 90 days, that the consent is still current.

This Rule should be flexible to fit within the framework model of the relevant sector. In energy, it may be operationally more efficient and cost effective that the notification be given on the customers next bill.

8. Member of a recognised dispute resolution scheme (Rule 5.11)

The draft CDR Rules requires that third parties become a member of a recognised external dispute resolution scheme prior to accreditation being granted.

It is not clear how third parties will be able to fulfil the obligation to become a member of a dispute resolution scheme in the energy sector as current Energy Ombudsman Scheme members are energy retailers and distributors only. Energy retailers and distributors pay the costs of operating such a scheme. AEMO and other third parties are not part of such schemes and there is currently no ability in the Ombudsman mandate to include other parties.

Origin believes that if data complaints are to be dealt with by Jurisdictional Energy Ombudsman Schemes, the scheme needs to be extended to these additional parties prior to the commencement of the CDR Rules. This is to ensure:

(i) participation, enforcement of decisions and ensure customers receive the benefits of such a scheme. Without a mandatory membership of the Scheme, response 'opt in' levels will be low (or zero); and
(ii) They become financial members of the Ombudsman Schemes. Non-memberships have the potential to lead to cross-subsidy issues where members will need to cover the cost of investigations for issues related to non-members.

9. 24-hour notice requirements (Rule 7.7)

The draft CDR Rules requirement to notify a CDR consumer within 24 hours of becoming aware of inaccurate, out of date or incomplete data being disclosed is onerous. The intentions of these requirements are to ensure any erroneous information is rectified as soon as possible before it is relied upon to a consumer's detriment.

Whilst there are no general privacy timeframes for notice, the phrase "as soon as practicable" is often used in the *Privacy Act*, and the APP Guidelines provide clarification of this phrase with respect to APP 5 (Notification of collection of personal information):

> *"The test of practicability is an objective test. It is the responsibility of the APP entity to be able to justify that it is not practicable to give notification or ensure awareness before or at the time of collection... In adopting a timetable that is 'practicable', an entity can take technical and resource considerations into account. However, it is the responsibility of the entity to be able to justify any delay in notification."*

Origin believes "as soon as practical" is sufficient in the energy sector as there are likely to be complexities of multiple data holders and the complexities of the data being exchanged through a gateway model. The obligation will then be on the data holder to justify to the Regulator if this notice isn't provided within a reasonable timeframe.

10. Privacy Provisions for Safeguard 12 (Schedule 1)

The additional privacy safeguards set out in Schedule 1 appear onerous and disproportionate for the level of data that will be exchanged in the energy sector. Origin does not believe that this level of protection is required in the energy sector. The requirement for expansive software protections (ie firewalls, encryption services), staff being subject to security training every year and staff being subject to a police check appear directed at the exchange sensitive data which may occur in the banking sector.

Additional and unnecessary security requirements will only increase the costs incurred by customers in implementing the scheme.